No. 14934

United States
Court of Appeals
For the Ninth Circuit

GREAT NORTHERN RAILWAY COMPANY, a corporation,

APPELLANT,

v.

LUMBER AND SAWMILL WORKERS, LOCAL UNION NO. 2409, A VOLUNTARY ASSOCIATION AND LABOR UNION, HELEN M. BOUCHEY, INDIVIDUALLY AND AS PRESIDENT OF SAID LABOR UNION, DORIS M. TRAYNOR, INDIVIDUALLY AND AS SECRETARY OF SAID LABOR UNION, RAY F. LINDBERG, INDIVIDUALLY AND AS FINANCIAL SECRETARY OF SAID LABOR UNION, LEONA L. STEIN AND JOSEPH S. BOGARD,

APPELLEES.

Reply Brief for Appellant

TAYLOR B. WEIR,
NEWELL GOUGH, JR.
ENOR K. MATSON,
Attorneys for Appellant,
(Address: Helena, Montana.)

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Appellee's answer brief ignores the basic questions presented on this appeal, viz:

(1) Are the I. C. C. Acts of the Congress and the National labor laws in irreconcilable conflict, the one requiring the rail carrier to serve the struck plant and move cars to and from the plant on a 24 hour time schedule, with severe penalties for failure; and the other (the National labor laws) empowering the labor union to tie up and prevent rail services to the struck plant with picket lines, pending

proceedings before the National Labor Relations Board under the Taft-Hartley Act; and

(2) If, under those conditions, the rail carrier is denied the right of injunctive relief in the courts, is it relieved by the effect of the labor laws from its obligation to serve the struck plant and from the penalties for failure to serve, and the penalties for its failure to maintain the 24 hour time schedule for moving cars, under the Order, Exhibit "A"; or, notwithstanding the picket line interference, the rail carrier is still beholden in damages to the struck plant for its failure to serve, and subject to penalties for failure to serve and maintain the 24 hour time schedule, pending proceedings before N. L. R. B. as in Montgomery Ward v. Northern Pacific Terminal Co., 128 F. Sup. 475? And,

(3) should the I. C. C. Acts and the National labor laws be so construed, as we contend, as to reconcile them to the extent that, unless the labor dispute demands relief directly from the rail carrier of a nature that the rail carrier has it within its power to grant that relief, as in the New Haven "piggy-back" case (76 S. Ct. 227, 100 L. Ed. 164) the Courts retain jurisdiction to grant injunctive relief against picketing of the railroad right-of-way or other interference by the Union with performance by the rail carrier of its statutory duties under the I. C. C. Acts of the Congress.

Unless these Acts of the Congress are so construed and reconciled, we have the situation whereby the rail

service to a whole community could be prevented or interfered with by the Union maintaining picket lines against all railroads serving the community, as a means of bringing economic pressure against one small shipper in the community, pending proceedings before the N. L. R. B.

The right of the rail carrier to proceed against the Union for damages, does not relieve such a situation, and moreover the rail carrier has no right to expend its funds for such extraordinary service, beyond its published tariffs, for the use, as here, of its supervisory officials in an effort to avoid the penalties of the I. C. C. Acts.

Respectively submitted,

TAYLOR B. WEIR
NEWELL GOUGH, JR.
ENOR K. MATSON
Attorneys for Appellant
(Address: Helena, Montana)